

stations. For instance, in the Spring of 1992, the construction of CMI's second AM station on 640 kHz (now WBOW) got underway in Terre Haute, and Michael Rice assisted the engineers in the installation and proofing of the station's directional antenna; program test authority was granted in October 1992. Lic. Exh. 1, pp. 11-12. Mrs. Cox described Mr. Rice's participation in some projects as that of a "go'fer", i.e., one who ran errands for such items as wire, batteries and soft drinks for the workers. Tr. 281-282.

43. Daniel Leatherman, the General Manager of LBI's Station KBMX from September 1990 to mid-March 1996⁸ (Lic. Exh. 3, p. 1; Tr. 133-34), testified that Michael Rice's purpose for visiting KBMX from time to time was to work on technical equipment. Tr. 152. For instance, Mr. Rice helped in the construction of a second production studio for KBMX. Lic. Exh. 3, pp. 1-2. Mr. Leatherman testified that after April 1991, Mr. Rice helped install equipment at the station less frequently than before April 1991. Tr. 172. In addition, Mr. Rice's on-site visits to the station were primarily at night and on weekends; Mr. Leatherman recalled that Mr. Rice and Eric Hoehn, the KBMX Chief Engineer, were there to fix equipment during normal business hours only if there was a major problem which, after April 1991, happened "maybe once. Not too often." Tr. 176. Mr. Leatherman also testified that Mr. Rice did not supervise the technical operation of the station; that was done by Eric Hoehn. Tr. 174. Further, if KBMX experienced technical

⁸ Mr. Leatherman, at the time of his cross examination, had voluntarily left KBMX to take a position with another radio station in which he has acquired an ownership interest. Tr. 133-134.

difficulties, Mr. Rice was not one of the persons who was telephoned. According to Mr. Leatherman, if the chief engineer was not available, LBI shareholder Kenneth Kuenzie was called. Tr. 177. Mr. Rice's name and telephone number were not on the station's list of individuals to call in case of an emergency. Tr. 177-178. Janet Cox similarly testified that Mr. Rice was not contacted if one of the Licensees' stations experienced technical problems; such problems were reported to station management and the station engineer. Tr. 337-338.

44. Kenneth Brown, General Manager of CMI's Stations WZZQ(AM)-FM/WBOW since April 1993 (Lic. Exh. 4, p. 1) testified that he saw Mr. Rice at the Terre Haute stations only on three or four occasions -- one time to assist in the installation of a new transmitter and tower for WZZQ(AM), and a few other times to oversee the installation of antennae on the FM tower in Terre Haute that Mr. Rice personally owns. Lic. Exh. 4, p. 3.

45. Mrs. Cox stated that Michael Rice's involvement in technical and engineering projects for the Licensees' stations was sporadic because he had other matters occupying his time. He resumed his landlord responsibilities in connection with the following properties he personally owns: the land and the building which houses the KBMX main studio; the building which houses the WBOW/WZZQ(AM)-FM main studios and other unrelated tenants; and the FM tower in Terre Haute. He also resumed his position as a technical consultant to Station KIRL, St. Charles, Missouri (unrelated to the Licensees), for which he received a salary, continued to have regular out-patient psychotherapy and spent a

substantial amount of time caring for his elderly parents during this period of time.⁹ In addition, Michael Rice undertook a several-months project of traveling around Illinois and Missouri to at least 10 AM stations, also unrelated to the Licensees, which retained him to make certain NSRC measurements which the FCC required of such stations in 1994. Lic. Exh. 1, pp. 12-13.

**3. Michael Rice's Post-Hospitalization Involvement
In Non-Technical Matters**

**a. Testimony of Licensees-Sponsored Witnesses
Cox, Leatherman, Hauschild and Brown**

46. Janet Cox: Mrs. Cox testified that the only financial matter of the Licensees in which Michael Rice, from time to time, had any involvement was the ministerial co-signing of checks if she or Malcolm Rice, who also had check signing authority, was unavailable to co-sign.¹⁰ Lic. Exh. 1, p. 12. However, Michael

⁹ Michael Rice's mother died after a long illness in July 1994. At approximately the same time, his 86-year old father, Malcolm, was incapacitated for a few months with a broken hip. Lic. Exh. 1, pp. 12-13.

¹⁰ Historically, the Licensees maintained checking accounts requiring two officers' signatures on checks. In December 1992, LBI's account was converted to a single-signature account. The accounts of CMI and CBI were each converted to single-signature accounts on September 29, 1994, the day before Michael Rice's incarceration. However, Michael Rice remains one of the signatories on each checking account. Bur. Exh. 3, pp. 7-9; Bur. Exh. 5. Janet Cox testified that she personally wanted a two-signature account for her own protection in the event the Rices' relatives ever questioned her practices. Tr. 316-317.

At the exhibit admission session, over the objection of the Licensees, the Presiding Judge directed the Bureau to place in the hearing record information concerning Michael Rice's check-signing activity between April 1991 and his incarceration on September 30, 1994, which information was not offered in the Bureau's direct case exhibits. Tr. 90-94. In discovery, the Licensees had produced a
(continued...)

Rice never issued a check which Mrs. Cox did not authorize, nor did he ever withhold a signature when she asked him to sign a check.

Tr. 329.

47. In connection with the Licensees' business operations, Mrs. Cox testified that Michael Rice did not do any of the Licensees' accounting work (Tr. 330); did not prepare or send out bills (Tr. 331); did not have any responsibility for paying bills except for signing checks as indicated above (Id.); did not take out any loans on behalf of the Licensees (Tr. 332); purchased equipment for the stations only at her specific request (Tr. 333); did not review equipment inventory for insurance purposes (Tr. 333-334); and did not determine employees' salaries (Tr. 335). In particular, Mr. Rice had no involvement in negotiating the employment contracts or the salaries of Richard Hauschild, General Manager of KFMZ since June, 1991 (see ¶64 infra) and Kenneth Brown. Tr. 279-280. Indeed, Mr. Rice had no involvement in the hiring of Kenneth Brown. Lic. Exh. 4, p. 1.

48. Moreover, Mrs. Cox, not Michael Rice, negotiated a lease for the Licensees' new corporate headquarters in October, 1993. She did so without Michael Rice's input or knowledge of where the new headquarters would be. Mrs. Cox testified that Mr Rice only knew that they had to move because the building in which the

¹⁰(...continued)

random sampling of checks written in the years 1991-1995 on the three Licensees' respective accounts. A total of 504 checks -- four checks from each month's bank statement -- issued between April 1991 and September 1994 were produced. Bur. Exh. 10, p. 2. Of those 504 checks, only 31 were signed by Michael Rice. Tr. 193-194.

headquarters office had been located was being sold. Tr. 275-277. In connection with an earlier move of the headquarters in March, 1991 to a building which Mrs. Cox co-owned with her husband, she also negotiated the lease on behalf of the Licensees without Mr. Rice's input, but she informed him beforehand that she was considering moving the headquarters to one of the buildings she co-owned with her husband, which she did. Tr. 278-279.

49. According to Mrs. Cox, Mr. Rice had no involvement in setting station policy regarding the number of commercials per hour that could run (Tr. 338); did not make sales calls (Tr. 339); and did not sign leases or contracts unless the president's personal guaranty was required. However, Mrs. Cox testified that in the case where a supplier required that the president sign as a personal guarantor, "usually I would say, 'Well if that's the case, there is [sic] 10 other equipment suppliers. Forget them." Tr. 339-340.

50. Mrs. Cox also testified that she developed updates to the Contemporary Employee Policy Manual in 1992 and 1994 without any input from Michael Rice. She negotiated contracts with the vendors who previously dealt with Michael Rice and delegated to the stations' engineers maintaining contacts with certain vendors with whom Michael Rice previously dealt. Lic. Exh. 1, p. 13.

51. Further, she testified that Mr. Rice did not supervise any personnel (Tr. 336), and did not get involved in personnel and programming decisions (Tr. 229), but would periodically receive calls initiated by employees, particularly announcers or disc

jockeys, seeking advice because Mr. Rice was a "student of the [broadcast] industry" (Tr. 336).

52. Mrs. Cox testified that Mr. Rice never instructed her to fire an announcer, program director or general manager, but he "might have said an announcer sounds terrible". Tr. 216-217. Her response to him would have been "Well, you get what you pay for." Tr. 218. Or, as she also testified:

He might have said, 'While you were here in Columbia this weekend, did you hear so and so?'

'Yes'

'Well, don't you think he sounds terrible?' or something of that nature.

And I would say, 'Yes, but the budget says X number of dollars.'

Tr. 261.

53. In connection with this same subject, the Presiding Judge queried Mrs. Cox as follows:

ALJ: In your relationship of working with Mike Rice, some people have different styles, and there are some people who come to somebody and say, 'I don't like the work of John Doe.' Now, they wouldn't have to say, 'Fire John Doe,' but it was understood that if they didn't like the work of John Doe, John Doe ought to be fired. Is that the way Mike Rice operated? Was that his management style?

JC: He would make statements like that. He might come in today ... and say, 'Oh, you know I think this guy is terrible.' I can see him five or six days later and he would say, 'This guy is great.'

ALJ: [W]as it Mike Rice's management style to direct people to do things by saying things indirectly like, "I don't like this guy," and then everyone knows that means to fire him?

JC: I don't know what individuals presumed.

ALJ: What did you presume?

JC: I didn't ... I made the business decisions on ... different things: ... what was the budget line; how did this individual fit in; where are we going to find somebody else; ... multiple things; and [I would] ask the program director...' What do you think?' There are times that the program director..., if they didn't like somebody or they wanted to fire somebody, they would say, 'Hey, I talked to Mike about this and they think this guy is terrible.' Well, ... what they did or what he did I could not control, especially after hours. But, like I said, ... 'Where are you going to find the water walker?'

ALJ: What's a water walker?

JC: [S]omeone who could fill the position in the manner in which they were looking for on that kind of notice.

Tr. 261-262.

54. Mrs. Cox further testified that Michael Rice's only involvement in the termination of a General Manager was in his capacity as a witness to her termination of John Rhea, who worked as the General Manager of CMI's Terre Haute stations (Tr. 232) for approximately one year (December 1991- December 1992) (Tr. 478). The reason for Mr. Rice's presence was that Mrs. Cox had been advised to have a witness to the termination of an employee, especially when terminating someone in a management-level position.

Tr. 235-236.

55. Mrs. Cox testified that before April 1991, Mr. Rice was not a hands-on manager or a hands-on policymaker at the stations, and after April 1991, "it became even less, and even after '91, I guess you could say I didn't even pay as much attention to the input after that length of time because of all the extenuating circumstances." Tr. 341.

56. According to Mrs. Cox, since Mr. Rice's incarceration on September 30, 1994, she communicates with him from time to time, and informs him about how the stations are faring when he asks. However, Michael Rice does not make policy or managerial decisions concerning the day-to-day operations of the stations, and she does not seek his advice on these matters or take orders or directions from him. Lic. Exh. 1, p. 14. She indicated, however, that she has used him as an informational resource, as she would a consulting engineer, about particular brands of equipment. Tr. 230-231.

57. Mrs. Cox stated that if the Licensees' stations are still operating when Mr. Rice is released from prison, she does not anticipate that he will take over control of the stations. Tr. 231.

58. Daniel Leatherman: With respect to the chain of command at LBI's KBMX, Mr. Leatherman testified that no station personnel reported to Michael Rice. Jeff Carr, the program director, ran the programming, and he, Mr. Leatherman, ran everything else. All station personnel were accountable to him (Leatherman) and he was accountable solely to Janet Cox. Tr. 175.

59. There were five memoranda faxed between Mr. Rice and Mr. Leatherman in April, May and July, 1993, dealing with the following subject matters: the purchase of an outdoor sign for KBMX; the building of a storage building; acquiring a water cooler at KBMX; repair of the KBMX newsroom telephone; washing the air conditioner condenser units; and construction for the conversion of a shower stall into a storage room in the studio building (Bur. Exh. 8; Tr. 144-154), Mr. Leatherman testified that in his opinion, the

referenced memos did not relate to KBMX's daily broadcast operations, but had to do with Mr. Rice's concerns as a landlord with the station's physical plant. Lic. Exh. 3, p.2; Tr. 183.

60. In connection with a sixth faxed memorandum dated November 2, 1993 (Bur. Exh. 11) from Michael Rice to Mr. Leatherman and Jeff Carr, the KBMX program director, Mr. Leatherman explained that LBI shareholder, Dennis Klautzer (a/k/a Casey Van Allen) had mentioned to Mr. Rice that KBMX needed more sound effects CD's, and Mr. Rice's memo was a follow-up inquiry as to whether that was, in fact, the case. Tr. 156-158. Mr. Leatherman testified that he did not respond to either Mr. Rice or Mr. Klautzer, but to Janet Cox (Tr. 158), who told him that they had enough sound effects. No new sound effects were purchased. Tr. 160. When asked why he responded to Mrs. Cox instead of to Mr. Rice or Mr. Klautzer, Mr. Leatherman testified that he always communicated with her (Tr.158); indeed, he had insisted on being answerable to one person when he was hired as the General Manager, and it had been agreed that the one person would be Janet Cox. Tr. 136. In this instance, he stated, "I'm insisting on what we agreed on when I was first hired." Tr. 159.

61. From the beginning of his tenure with LBI, Mr. Leatherman sent sales reports to the Licensees' headquarters in St. Peters, Missouri, but he never had any discussions with Michael Rice concerning the substance of any such reports, nor did he and Mr. Rice have any discussions concerning personnel matters, such as hiring and firing. His contacts with LBI management pertaining to personnel were exclusively with Janet Cox. He also had annual budget meetings with Mrs. Cox at LBI headquarters. Michael Rice

— did not attend or otherwise participate in these meetings. Lic. Exh. 3, p. 2. Mr. Leatherman further testified that there was no change in the manner in which KBMX operated after Michael Rice's conviction or subsequent incarceration. Lic. Exh. 3, pp. 2-3.

— 62. Regarding more specific areas of station operations, Mr. Leatherman testified that Mr. Rice never availed himself of the station's petty cash; did not have access to the station books and records which Mr. Leatherman kept at the station; never asked to see such records (Tr. 168-170); did not send out bills; had no involvement in paying ASCAP, SESAC and BMI or made loans on behalf of the station (Tr. 170-171); did not do sales work (Tr. 179); did not use tradeout arrangements after April 1991 (Tr. 180); had no involvement in establishing the station's rate card (Id.); had no involvement in signing or approving sales contracts (Tr. 181); and had no involvement in matters regarding federal, state and local taxes, withholding taxes or W-2 forms. Id.

— 63. Further, Mr. Leatherman testified that Mr. Rice had no involvement in dealing with prospective employees, hiring, firing or setting salaries, or supervising any KBMX personnel, including Mr. Leatherman, except to the extent reflected in the memoranda discussed at ¶59 above. Tr. 173. Mr. Leatherman stated that Mr. Rice had no contacts with Jeff Carr, the KBMX program director. According to Mr. Leatherman, "that was something that was just not done. I would have heard about it, believe me." Tr. 155. In addition, although the easy listening format of the station was not changed, it was, in Mr. Leatherman's words, "fine-tuned", and Mr.

any discussions concerning the fine-tuning of the format.¹¹ Tr. 142. Mr. Leatherman testified that Michael Rice was so uninvolved in managerial, policy or day-to-day operations at KBMX that some members of the station staff, particularly part-timers, did not know he was an owner of the Station. Mr. Leatherman remarked that he received a call from an employee asking, "Who is this guy?". Lic. Exh. 3, p. 2; Tr. 176-177.

64. Richard Hauschild: Mr. Hauschild has been employed with CBI Station KFMZ since October 1988, and was promoted to the positions of General Manager and Sales Manager in June 1991. Mr. Hauschild testified that Michael Rice had no involvement in his promotion, which followed a face-to-face meeting which he had with Janet Cox and Malcolm Rice. Lic. Exh. 2, p. 1. Mr. Hauschild stated that he has had very minimal contact with Michael Rice since he first became employed at KFMZ as an account executive. He has had no more than three or four contacts with Mr. Rice, all in person, and all limited to general, informal conversation -- not KFMZ business, operations or programming. Lic. Exh. 2, p. 2. Tr. 622.

65. Mr. Hauschild further testified that since becoming the General Manager of KFMZ, he has received no letters, memos or other correspondence, or telephone calls from Michael Rice regarding sales, programming, personnel, or any other aspect of Station policy, management or daily operations. Likewise, Mr. Hauschild

¹¹ According to Mrs. Cox, Dennis Klautzer selected the KBMX format when it went on the air in 1988; that was his specialty. Tr. 202-03.

has never written a letter or memo to Michael Rice, nor telephoned him to discuss sales, programming, personnel or Station management, policy, daily operations or any other matter concerning the Station. Lic. Exh. 2, p. 2.

66. Mr. Hauschild stated that all of his contacts with CBI have been with Janet Cox, or her administrative assistants, with whom he meets, speaks by telephone and communicates in writing on a regular basis. Id. He has attended an annual budget meeting with Mrs. Cox at company headquarters in St. Peters, Missouri, in October or November of each year since 1991. These meetings were attended by the KFMZ program director and, on occasion, the station engineer, but Michael Rice never participated in person, by telephone or otherwise. Lic. Exh. 2, pp. 2-3.

67. **Kenneth Brown:** Kenneth Brown, the current general manager of WZZQ(AM)-FM/WBOW, testified that he was hired by Janet Cox in April 1993 without speaking to or meeting with Michael Rice, and that he did not know who Michael Rice was until after he became employed by CMI. Lic. Exh. 4, p. 1. Like Mr. Hauschild, Mr. Brown testified that his contacts with company headquarters have been with Janet Cox and her administrative assistants, and never with Michael Rice. Id. Mr. Brown also testified that he has never received any letters, memos or telephone calls from Mr. Rice concerning the stations' sales, programming, personnel or operations. Similarly, Mr. Brown has never written a letter or memo to Michael Rice, or telephoned him for such purposes. He testified that he regularly speaks by telephone or communicates in writing with Janet Cox and her administrative assistants, but never with

Michael Rice. Lic. Exh. 4, p. 2. In fact, his only face-to-face contacts with Michael Rice were a few casual conversations with him when Mr. Rice came to Terre Haute on matters relating to the FM tower he owns there or equipment installation. Mr. Brown testified that during these conversations, they had no in-depth discussions concerning the day-to-day operations of the Terre Haute stations, and that Mr. Rice never gave him any orders or directions concerning such operations. Moreover, Michael Rice has never provided him with any programming consultation. Further, he stated that Michael Rice has had no involvement in any hiring or firing of personnel since he became the Terre Haute general manager. Lic. Exh. 4, p. 3.

68. Mr. Brown also attends annual budget meetings with Janet Cox at the Licensees' headquarters, and Michael Rice has not attended or otherwise become involved in any of these meetings. Mr. Brown testified that he has never spoken with or otherwise consulted Michael Rice on any of the issues addressed in the annual budget meetings. Lic. Exh. 4, p. 2.

b. Testimony of Leon Paul Hanks and John Rhea

69. Leon Paul Hanks a/k/a Chris Kellogg (herein referred to as Mr. Hanks) and John Rhea, both former employees of the Licensees who were terminated, testified as rebuttal witnesses for the Bureau in connection with the misrepresentation issue.¹²

¹² In response to a discovery request, the Licensees provided the Bureau with names and last known addresses and telephone numbers of nearly 200 individuals who worked at the Licensees' stations between 1991 and the present. However, Messrs. Hanks and Rhea were
(continued...)

70. **Leon Paul Hanks:** Mr. Hanks began working for CBI's Station KFMZ as a disc jockey in August 1985, and was promoted to the position of program director in February 1989. He was terminated in August 1994 by KFMZ General Manager Richard Hauschild and Mr. Hanks subsequently filed a discrimination lawsuit against CMI, which is pending. Tr. 362-364. Mr. Hanks, who has epilepsy, contends that "there was no foundation for termination except my health problem." Tr. 364. When asked whether he believed his termination by CMI was fair or unfair, Mr. Hanks had great difficulty providing a direct answer, indicating he had never thought about his termination in such terms. After no less than five repetitive questions on this topic were put to him, he finally responded, "[M]y thought processes are saying I think it was inappropriate. Therefore, if it was inappropriate, the answer would have to be that it was unfair." Tr. 432-434. According to Mrs. Cox's testimony, Mr. Hanks was terminated because he did not do his job. Tr. 342.¹³

71. Mr. Hanks admitted in his testimony that, being a disc jockey, he is "self-centered" (Tr. 389) and "can have a tendency to

¹²(...continued)

the only former or current employee witnesses produced by the Bureau.

¹³ Mrs. Cox testified that she had given Mr. Hanks an opportunity to take a medical leave of absence "to get his medicine squared away, get his life together". According to Mrs. Cox, Mr. Hanks was not following his doctor's advice to quit smoking and drinking and to get sleep. Instead of taking the medical leave that was offered, Mr. Hanks took a vacation, and when he returned, his performance was worse than it had been before. Eventually, Mr. Hauschild fired Mr. Hanks with Mrs. Cox's concurrence. Tr. 312-313, 588.

exaggerate", although he stated that he "tried to answer as honestly and straightforward as possible." Tr. 471. Richard Hauschild, who terminated Mr. Hanks, described Mr. Hanks as "very prideful". During the time they worked together, Mr. Hanks "did not take criticism very well, and reacted pretty negatively to most criticism." Tr. 615-616. As Mr. Hauschild put it, Mr. Hanks' firing from KFMZ was "the ultimate criticism". Tr. 616.

72. Mr. Hauschild further testified that he attended a deposition of Mr. Hanks taken in his discrimination case against CBI, and, when, off the record, Mr. Hanks was asked what he really wanted out of the case, Mr. Hanks, who was very agitated at the time, stated that he wanted to "get the station, the company, Mike Rice, and everything the law is going to allow me." Tr. 615. While Mr. Hanks denied making such off-the-record statements at his deposition, he did admit saying on the record that he was going to get "all that the law will allow in my particular case." Tr. 461.

73. Since November 1994, Mr. Hanks has been employed as the program director of another Columbia, Missouri radio station, KOQL. Tr. 361. According to Mrs. Cox, KOQL is a direct competitor of KFMZ (Tr. 552); both stations target the same demographics with different formats (rock and oldies). Tr. 583-585.

74. John Rhea: John Rhea served as the General Manager of CMI Stations WBOW and WZZQ beginning on December 30, 1991, and was terminated on December 16, 1992 (Tr. 478). Mr. Rhea had had approximately 20 years of general manager positions prior to his termination from the CMI stations; he testified that his termination from CMI was a career setback for him (Tr. 523) and that he

had animosity toward both Janet Cox and Michael Rice at the time of his termination. Tr. 524. Mr. Rhea testified that he was informed that a reason for his termination was that the numbers for WBOW were not what they should have been (Tr. 521), but that he felt that the negative publicity resulting from Mr. Rice's criminal charges contributed to the station's numbers decreasing. Id. Thus, on cross-examination he admitted that he blamed Mr. Rice "a little bit" for his termination. Tr. 522.

75. Mr. Rhea is no longer a station general manager and is now a senior sales representative for an urban contemporary station in the Memphis, Tennessee market. Tr. 476. He explained this change in his career as a result of the diminished need for radio station general managers around the country caused by the FCC allowing duopolies, multiple ownership of radio stations in the same market. Tr. 530.

76. Rhea testified that when he was hired by Janet Cox for the General Manager position, she told him nothing about Michael Rice. Tr. 480. However, when asked again, Mr. Rhea testified that Mrs. Cox told him that the stations were owned by an absentee owner, Michael Rice, who had been ill, and that she had taken over as the chief operating officer. Tr. 481-482. Mr. Rhea testified that during his tenure with CMI, in his mind, Mr. Rice remained an absentee owner. Tr. 506-507. Mr. Rhea testified, however, that he was upset when he learned about Michael Rice's indictment approximately six weeks after he began working there. He stated that he would not have taken the general manager position had he known

about the indictment "on the front end" because he had maneuverability and other job options at the time. Tr. 499.

77. Mrs. Cox denied Mr. Rhea's version of the hiring process. According to Mrs. Cox, in fact, she did inform Mr. Rhea about Mr. Rice's indictment when she hired him, and told him that some employees might resign as a result, but that Mr. Rhea voiced no reservation about taking the position at all; in fact, he pursued her for the position because he was then out of a job. Tr. 576-577.

78. When asked whether there were any complaints raised against him by station personnel during his tenure at WZZQ/WBOW, Mr. Rhea initially responded, "Not really." Then, when asked whether he had been accused of unauthorized contact by female employees, Mr. Rhea admitted that that was the case and that he had felt wrongfully accused. Tr. 515-516.

(1) Mr. Rice's Alleged Involvement
With Personnel and Programming
Decisions at Terre Haute Stations

79. With respect to his job with CBI, Mr. Hanks testified that his position as program director of KFMZ expanded to "group" or "corporate" program director with added duties of assisting the WZZQ program directors to keep them and the station's format "on track and consistent with what Mike [Rice] expected, which was very much like KFMZ's format was." Tr. 367-368. As to when he became the "group" or "corporate" program director, Mr. Hanks testified that there was no specific date, but a press release was sent out

in November 1992 announcing that he had become the group program director. Tr. 369-370.

80. The first time Mr. Hanks' role expanded beyond KFMZ was in late 1991 or early 1992, after Michael Rice's release from the hospital. Mr. Hanks was uncertain how long he acted as group program director, but he testified that it continued through "at least the middle of 1993, perhaps the bulk of 1993". Tr. 371.¹⁴

81. As group program director, he spoke with Michael Rice by telephone once or twice a week, with such calls initiated by either of them. The purpose of the calls was to update Mr. Rice on how things were going at WZZQ, such as problems with the program director conforming to Hanks' directives or the addition of new songs for airplay. During these conversations, Mr. Hanks testified that Mr. Rice would criticize disc jockeys or songs that didn't fit the station's format. Tr. 372-374.

82. The record reflects that WZZQ had the following four program directors in the 1992-93 period: Todd Hohlman, Mike Steele (a/k/a Mike McMillion), Mark Savage (a/k/a Mark Bianchi) and Ben Jacobs (a/k/a Ben Orzeske).¹⁵ Each will be addressed below:

¹⁴ Mr. Hanks testified that he took on the role of group program director at the behest of Mr. Rice. Tr. 371. However, Janet Cox testified that she made the decision to expand Mr. Hanks' program director functions based on recommendations she received from individuals who had similar formats at their stations. Tr. 259.

¹⁵ Mr. Hohlman, who had been with the station several years, left in February 1992. Tr. 555, 509. Then followed Mr. Steele/McMillion from approximately March through April 1992. Tr. 484. Then followed Mr. Savage/Bianchi from April 1992 (Tr. 569) to November 1992 (Tr. 491). Then followed Mr. Jacobs/ Orzeske from November 1992 (Tr. 414) to sometime in 1993. The date that Mr. Jacobs was terminated is not in the record. Mr. Hanks' testimony indicates,
(continued...)

83. **Todd Hohlman:** Mr. Hanks testified that Hohlman was "let go" (Tr. 405) from WZZQ, and that it was Michael Rice's idea. Tr. 404-405. However, Janet Cox testified that Mr. Hohlman was not terminated; he voluntarily left to take a job in a bigger market. Tr. 555. Additionally, Mr. Rhea, who was the general manager of WZZQ at the time Mr. Hohlman left, testified that Mr. Hohlman resigned to take a job in Florida. Tr. 483.

84. **Mike Steele:** With regard to the hiring of Mike Steele, Mr. Hanks testified that Michael Rice told him that he, Rice, heard Steele on a station in Warrenton, Missouri. However, Hanks could not recall whether Steele initiated the contact with Mr. Rice, or Mr. Rice initiated the contact with Steele. According to Hanks:

Mike Rice talked to the guy, and asked him to come on over to Terre Haute and be a PD there. And told him Janet would take care of - take care of the hiring, or told me that Janet would take care of the hiring." Tr. 406.

85. Mrs. Cox's testimony about the hiring of Mike Steele differs from Mr. Hanks' testimony. She stated that she learned about Mr. Steele from an announcer in the St. Louis area. The station where Steele worked was going digital, and a lot of employees were being let go. She then listened to Steele on the air and she asked Mike Rice if he knew Steele since he knew a lot of people in the broadcast industry, and Mr. Rice was familiar with Steele's name. Tr. 263. Mrs. Cox did not recall precisely how she

¹⁵(...continued)

however, that Mr. Jacobs worked through at least the middle of 1993, or the "bulk of 1993". Tr. 371. What is clear is that Mr. Jacobs was fired sometime after Kenneth Brown became the WZZQ/WBOW general (April 13, 1993) because it was Kenneth Brown who terminated Mr. Jacobs. Tr. 575, Lic. Exh. 4, p. 3.

contacted Steele, but she did recall his dropping off his resume at her office, and she then called him in for an interview and decided to hire him. Tr. 264. She further testified that Michael Rice did not direct her to hire Steele, nor did she get Mr. Rice's approval to hire Steele. Tr. 555.

86. According to Mrs. Cox, Mr. Hanks and Mr. Rhea, Mr. Steele's undoing at WZZQ surrounded his changing the station's reporting status with the publication, Radio & Records ("R&R"), from rock to another category. Tr. 265, 406-407, 485. However, their testimony diverges from that point. Mr. Hanks testified that in a phone conversation between him and Mr. Rice, Mr. Rice was furious about the R&R reporting change and wanted Steele gone immediately. Tr. 407. However, Mr. Hanks later testified that Steele's termination was precipitated by both the change in the R&R reporting and Steele's subsequent change in the format. Tr. 442.

87. Mr. Hanks recanted his testimony after being shown a copy of a memo which he wrote to Mrs. Cox reporting to her about Mr. Steele's R&R reporting change. He recalled that Mrs. Cox had a strong negative reaction to Steele's changing the WZZQ reporting status with R&R, and that the R&R reporting change led to Steele's termination. Tr. 444-445. As to when Mr. Steele was let go, Hanks first testified that it was not immediately after Hanks' memo was received by Mrs. Cox. Tr. 445. But, later, on cross-examination, when Mr. Hanks was told that Mr. Steele was terminated four days after the date of Hanks' memo, Mr. Hanks testified that he now had no independent recollection of when Steele was fired. Tr. 447. Mr. Rhea initially stated that he was not sure whether he spoke with

both Mr. Rice and Mrs. Cox, or just Mrs. Cox about this matter. Although, he testified that Mr. Rice was livid about the R&R reporting change, he stated that he fired Steele at Janet Cox's instruction. Tr. 485. Later, Mr. Rhea testified that he fired Steele at the instruction of both Mrs. Cox and Mr. Rice because he had also had spoken to Mr. Rice. Tr. 511. After further questioning, however, Rhea stated once again that it was Janet Cox who called him and instructed him to fire Steele. Tr. 512.

88. Mrs. Cox recalled that after she learned about the R&R reporting change, she telephoned John Rhea and asked, "What the hell is going on here?" Tr. 265-266. She stated that in her conversation with Mr. Rhea, she told him she was extremely upset about the reporting change, and Mr. Rhea indicated that he didn't think it was that big a deal, but that he would take care of it. Mrs. Cox assumed that by "taking care of it", Mr. Rhea meant that he would reverse the reporting change. But, what happened was that WZZQ lost its reporting status in R&R. Tr. 568-569. In any case, Mrs. Cox testified that contrary to Mr. Rhea's version of events, Steele was not fired at her direction; rather, he resigned:

Q: And how do you know that he resigned?

A: Because John Rhea sent his termination slip in as resigned and John Rhea signed it.

Tr. 560.

89. Mark Savage: Mrs. Cox testified that John Rhea was responsible for hiring Mark Savage, recalling that Rhea had stated that he wanted to hire "his boy" because he thought, that way, he and the program director would have a better working relationship.

Tr. 569. Mr. Rhea also testified that he hired Savage and thought Savage was an excellent employee. Tr. 491.

90. Mr. Hanks testified that Michael Rice "decided to get rid of" Mr. Savage. However, Hanks also testified that Savage was let go "because he just wasn't working out with the format. Every time I would go over there and tweak, fine tune the format, he would - you know, then I would go back to my station, he would start veering back off focus again." Tr. 380.

91. Janet Cox testified that Michael Rice neither directed her to fire Mark Savage nor told her that he wanted Savage fired. According to Mrs. Cox, it was Paul Hanks who "wanted him fired" because "[h]e was difficult to get along with. In my opinion, I believe that [Hanks] felt that Mark Savage was a threat to him. I have believed for a long time that [Hanks] always felt that like anybody who was maybe more talented than he was, that this was a threat to him. He never wanted to have anybody who was a better talent than he was." Tr. 570-571. Mrs. Cox learned from both Messrs. Savage and Hanks, and from John Rhea, that there were conflicts between Savage and Hanks. Mrs. Cox testified that Savage resented Hanks' input at WZZQ because he felt he was more qualified than Hanks since he, Savage, had worked in larger markets and with more consultants. Tr. 571. In fact, according to Mrs. Cox, earlier on in his tenure at WZZQ, Mark Savage resigned, only to later revoke the resignation. Tr. 572. Mr. Rhea confirmed the tension between Messrs. Hanks and Savage:

Q: And you also mentioned that there was a conflict between [Hanks] and Savage, right? You get that sense?

A: Yes.

Q: Do you think that had an impact on Mr. Savage's termination?

A: Yes.

Tr. 514.

92. Mrs. Cox testified that Savage was fired for multiple reasons. Not only was he not following the format, he also had personal problems which kept him from working longer than a 40-hour week, which is required for a program director. Also, because of the format problems, she was concerned that "improper things ... were going on." Tr. 571.

93. Mr. Hanks recounted that he accompanied Michael Rice and Janet Cox to Terre Haute for the purpose of terminating Mark Savage. According to Mr. Hanks, when they arrived at the stations, they met with John Rhea in Mr. Rhea's office. Messrs. Hanks, Rice and Rhea stayed in Mr. Rhea's office, while Janet Cox, alone, went to Mr. Savage's office to fire him. Tr. 382. Mr. Hanks testified that during the conversation among Messrs. Rice, Hanks and Rhea when Mrs. Cox was out of the room, Mr. Rice stated, "You know, I can't do that anymore. Janet has to do that". Tr. 383. On cross-examination, Mr. Hanks was given an opportunity to modify his story, but did not do so:

Q. You, Mike Rice and John Rhea waited in the conference room and then --

A. In John's office while Janet went downstairs to fire him.

Q. Okay. So Mr. Rhea wasn't there when Mr. Savage was fired?

A. No, he was not.

Q. All right, and if he said he was, he would be mistaken, right?

A. You mean if he said he was present in the room when he was fired? Yeah, that's correct.

Q. It's correct that he would be mistaken?

A. Yes.

Tr. 450.

94. The testimony of the Bureau's only other witness, John Rhea, conflicted with Mr. Hanks' testimony on this matter. He testified that Janet Cox and Michael Rice came to the Terre Haute stations together, that he was called into the office and Mr. Rice directed him to accompany Janet Cox in firing Mr. Savage. Tr. 493-494. When cross-examined on Mr. Hanks' version of the facts, Mr. Rhea testified that:

Q: ...If [Paul Hanks] had said that actually Janet went and fired Mr. Savage herself, and that you stayed in another room and engaged in conversation with Mr. Rice and with [Hanks], he wouldn't be telling the truth, would he?

A: He would not.

JUDGE STEINBERG: Or he could be remembering it incorrectly?

THE WITNESS: That's right.

Tr. 513.

95. **Ben Jacobs:** Ben Jacobs was first music director at KFMZ, and later program director at WZZQ. Tr. 381. Mr. Hanks testified that Mr. Jacobs eventually fell out of favor with Mr. Rice after Mr. Jacobs made some personnel changes at WZZQ based on a "casual conversation" with Mr. Rice in which Mr. Jacobs mentioned making the changes, and Mr. Rice responded favorably. Mr. Hanks testified that Mr. Rice later told Hanks that Jacobs "has got to go". Tr.

414-415. Mr. Hanks, however, did not fire Mr. Jacobs and he did not know who actually did fire Mr. Jacobs. Tr. 416-417. Indeed, Mr. Hanks admitted on cross examination that he did not know the reason why Mr. Jacobs was ultimately fired. Tr. 448. Janet Cox testified:

Q: Now, who fired Ben Jacobs?

A: Ken Brown.

Q: And did Mike Rice ever tell you that Jacobs had to go?

A: No.

Q: To your knowledge, did Mike Rice direct Ken Brown to fire Jacobs?

A: No.

Q: Do you know why he was fired?

A: Do I know what?

Q: Why Jacobs was fired?

A. Because Ken said that the job was just overwhelming. It was too much. He said, 'Ben just wasn't ready for all the responsibilities of a program director at that station.'

Tr. 575-576.

96. Other Terre Haute employees whose termination was the subject of testimony were Chip Ramsey, the program director at WBOW when John Rhea became general manager, Steven Holler, an announcer for WBOW, and John Rhea.

97. Chip Ramsey: John Rhea testified that Michael Rice didn't like Mr. Ramsey, who was on his second stint with WBOW. Tr. 483, 486. Mr. Ramsey had initially worked as announcer, and subsequently as the program director for WBOW. Tr. 573. According